

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4004883R

Raymond Armstrong

Jacqueline Berry

Samuel J Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Type Non-Admt);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
 FILED  
 APR 17 AM 9:59  
 JANE T. McBRIDE  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 17 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Shannon Lee Felder

Catharine H. Garbee Griffin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

**RECEIVED**

MAY 14 2013

**SCANNED**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Raymond Armstrong,

Plaintiff,

v.

Samuel J. Thompson,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-04883R


**ORDER**

RICHLAND COUNTY  
FILED  
2013 APR 17 AM 9:55  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

This matter comes before the Court by way of a Rule 59(e), SCRPC motion filed by Plaintiff to alter or amend this Court's May 30, 2012 Order. The Motion for Reconsideration was filed with the Clerk of Court on June 13, 2012. A copy of the Motion was not served on the Court pursuant to Rule 59, SCRPC. The Motion was not brought to the Court's attention until March 26, 2013.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Reconsider the Order Granting Defendant's Motion for Summary Judgment. Pursuant to Rule 59(f), oral argument is not necessary.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
April 16, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4004883R

Raymond Armstrong

Jacqueline Berry

PLAINTIFF(S)

Samuel J Thompson  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

RICHLAND COUNTY  
FILED  
2012 MAY 30 AM 9:27  
JEANETTE W McBRIDE  
Clerk of Court

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE COURT'S RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
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Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Shannon Lee Felder

Catharine Garbee Griffin

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
Clerk of Court Jeanette W McBride

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FIFTH JUDICIAL CIRCUIT )

Raymond Armstrong, )

Plaintiff, )

v. )

Jacqueline Berry and Samuel J. Thompson, )

Defendants. )

C/A No.: 2011-CP-40-4883R

**ORDER**

RICHLAND COUNTY  
FILED  
2012 MAY 30 AM 9:27  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

This matter is before the Court on Defendant Samuel Thompson's Motion for Summary Judgment as to Plaintiff's claims of negligence. A hearing was held on May 8, 2012, at which time the Court heard arguments from counsel for Defendant, Catherine Griffin, Esquire, and counsel for Plaintiff, Shannon Felder, Esquire.

**FACTUAL BACKGROUND**

In November of 2005, Plaintiff and his sister, Beverly Armstrong Washington, rented a home located at 212 Hickory Ridge in Columbia, South Carolina from Defendant Samuel Thompson. On October 1, 2006, the Plaintiff fell in the Defendant's home and thereafter brought this lawsuit on the basis that Thompson failed to "take proper care of the property" and failed to provide a "safety [sic] living environment."

The Plaintiff allegedly fell between the living room and the kitchen in the home rented from the Defendant Thompson. The living room, which is adjacent to the kitchen, had hardwood flooring. The kitchen had a linoleum floor. As a divider between the two rooms, Defendant screwed down a piece of transitional wood approximately four inches wide that covered or spanned the doorway between the kitchen and the living room. Mr. Thompson used approximately six screws to secure the wooden threshold.

The Plaintiff did not request any repairs before he moved into the house. Plaintiff and his sister had lived in the house for approximately eleven (11) months when Plaintiff fell. The Plaintiff claims to have fallen because "the floor went down" and a "board came up." The Plaintiff's sister said under deposition that a piece of molding popped up. The Plaintiff testified in his deposition that he went into the kitchen a couple of times a day and never felt the floor

give way or had the board pop up as he walked over it. The Plaintiff further testified that during the eleven months he lived in the house that he never noticed any loose molding between the kitchen and the living room and that he "never had boards pop up before the incident." He testified that when the molding came up, he tripped and fell over it and, "just went down." He stated during the time he lived in the house, he walked over the area between the living room and the kitchen a couple of times a day and never felt the floor give way. The Plaintiff stated that he never reported to anybody that there was something wrong with the board.

Likewise, the day before the Plaintiff fell, Armstrong's sister walked through the same area and did not notice anything about the wood. She stated that the ¼' round molding which she described as the piece of wood her brother's foot broke loose had "very long nails and had probably been there since the house was built." She never reported the condition of the wood to Thompson. Washington also testified that there was some softness in the kitchen floor near the dishwasher, but that it was "nothing about that archway" [the area between the living room and kitchen] and was not an issue that required an immediate repair.

#### STANDARD OF REVIEW

When considering summary judgment, the evidence and inferences should be viewed in the light most favorable to the nonmoving party. Etheredge v. Richland School Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000). However, once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party cannot rest upon mere allegations but must come forward with evidence. Baughman v. American Tel & Tel Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Gadson v. Hembree, 36 S.C. 316, 613 S.E.2d 533 (2005). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Id. In cases where the burden of proof is by a preponderance of the evidence, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009). A scintilla of evidence is any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror. Taylor v. Atlantic Coast Line Railway Co., 78 S.C. 552, 59 S.E. 641 (1942).

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## DISCUSSION

The common law rule concerning the condition of leased property is that the landlord has no duty to use due care to insure that the premises are safe. Instead, the tenant generally is responsible for the premises. Marks v. Industrial Life and Health Insurance Company, 212 S.C. 502, 48 S.E.2d 445 (1948). Through the years, the South Carolina Supreme Court has acknowledged that several exceptions exist to this rule. The court has recognized an exception for concealed dangers where the lessor knows or should know that a dangerous condition is not obvious to the lessee. If the lessor knows or should know that a dangerous condition is not obvious to the lessee, then the lessor must use due care to discover and warn of that latent condition. Timmons v. Williams Wood Product Corp., 164 S.C. 361, 162 S.E. 329 (1932). Defendant contends that the condition of the threshold was not dangerous and could not have been discovered upon a reasonable inspection. The Plaintiff and his sister's testimony are consistent that there was nothing notable about the threshold until the day of the Plaintiff's accident. A reasonable inspection would not have revealed the alleged defect. Therefore, this exception would not apply to create a duty for the landlord to keep the premises safe.

Another recognized exception, under common law, is that if the landlord undertakes to perform an act, such as a repair, that the act must be performed with due care. Watson v. Sellers, 299, S.C. 426, 385 S.E.2d 369 (Ct. App. 1989). There is no evidence in this case that the landlord undertook any action to repair the threshold in the leased premises. Therefore, the Plaintiff has no evidence that the landlord had a duty to use due care to insure that the leased premises are safe under common law. Because the Plaintiff has only pled allegations of common law negligence, there is no genuine issue of material fact regarding the actions of the landlord, and, this court should grant summary judgment in favor of the Defendant.

There is no evidence that Plaintiff provided written or oral notice of the defect or needed repairs to the Defendant landlord, as required by the South Carolina Residential Landlord Tenant Act. The South Carolina Residential Landlord Tenant Act provides that a landlord would have a duty to "make all repairs and do what is reasonably necessary to put and keep the premises in a fit and habitable condition." S.C. Code Ann § 27-40-440(a)(1)-(2). After the passage of the Landlord Tenant Act the Court in Watson v. Sellers, supra, held that "a tenant of residential property has a cause of action in tort against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable

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condition.” The issue of the duty of a landlord to make repairs was addressed again by the court in Robinson v. Code, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009). There, the Court of Appeals held that a landlord’s failure to provide smoke detectors was not actionable under the Landlord Tenant Act because, in part, the tenants failed to allege that they had notified the landlord of the need for the smoke detectors. The South Carolina Residential Landlord Tenant Act, S.C. Code Ann. §§ 27-40-10 et seq., requires a landlord to comply with applicable housing codes materially affecting health and safety, and “make all repairs and to do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.” Section 27-40-610(a) requires the delivery of a “written notice to the landlord specifying the acts and omissions constituting the breach” before liability attaches. The tenant must then demonstrate that the landlord failed to act in a reasonable time for a cause of action to arise. Robinson, 682 S.E.2d at 495. Because the Landlord Tenant Act requires that notice be in writing, it follows that the tenant must notify the landlord in writing of the need for repairs to trigger liability.

The Plaintiff has presented no evidence to raise a genuine issue of material fact that the Plaintiff gave notice either in writing or orally, to the Defendants of the need to repair the threshold. At the time Armstrong and his sister moved into the house, they testified that the house was in good shape and did not need repairs. When Plaintiff entered into a lease with Defendant, Defendant no longer had a legal duty to correct a defect which arose in the home after the space was rented, unless given written notice. Plaintiff’s rights under the South Carolina Landlord Tenant Act only arise after the landlord fails to take action to make repairs after notice. Here, both the Plaintiff and his sister, who resided in the home, never notified the Defendant of the need to repair the threshold. Therefore, Defendant Thompson is entitled to summary judgment as a matter of law.

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ORDER

For the aforementioned reasons, the Defendants' motion for summary judgment as to the Plaintiff's claim of negligence is GRANTED and this case is dismissed.

**AND IT IS SO ORDERED.**



ALISON RENEE LEE  
Fifth Judicial Circuit

Columbia, South Carolina  
May 24, 2012

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